

APPENDIX C: Wetland Resources

C-3. USACOE Wetland Jurisdictional Determination

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION:

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 2/26/2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District, NWO-2013-01385-MTH

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MT County/parish/borough: Meagher City: White Sulfur Springs
Center coordinates of site (lat/long in degree decimal format): Lat. 46.59776N; Long. -110.88412W
Universal Transverse Mercator:

Name of nearest waterbody: Lower Sheep Creek, Black Butte Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Smith River

Name of watershed or Hydrologic Unit Code (HUC): L1003010301 North Fork Smith River

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 8-25-2015, 11-25-2015
 Field Determination. Date(s): 7-25-2015

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: see chart linear feet: width (ft) and/or see chart acres.
Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **3** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: **4:1 (or greater)**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year: Pick List

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

- Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: a.

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): .
- Vegetation type/percent cover. Explain: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: linear feet width (ft), Or, acres.
 - Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: flow observed by land and/or mine owners for more than 3 months a year.
 - Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: **see chart** linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: **see chart** linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **surface water connection observed.**
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **see chart** acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.**

NWO-2013-1385-MTH-S-BBT1-03	R3RB2	3226	FOOT	RPW	46.78763 -110.94
NWO-2013-1385-MTH-S-LS-01	R3UB3	1887	FOOT	RPW	46.77559 -110.898
NWO-2013-1385-MTH-S-LS-02	R3UB3	631	FOOT	RPW	46.7742 -110.897
NWO-2013-1385-MTH-S-LS-03	R3UB3	1826	FOOT	RPW	46.77253 -110.894
NWO-2013-1385-MTH-S-LS-04	R3UB3	8109	FOOT	RPW	46.77085 -110.883
NWO-2013-1385-MTH-S-LS-05	R3UB3	13710	FOOT	RPW	46.76068 -110.882
NWO-2013-1385-MTH-S-LS-06	R3UB1	3443	FOOT	RPW	46.74337 -110.908
NWO-2013-1385-MTH-S-LST1-01	R3UB3	4862	FOOT	RPW	46.76901 -110.897
NWO-2013-1385-MTH-S-LST2-01	R3UB3	44	FOOT	RPW	46.76216 -110.895
NWO-2013-1385-MTH-S-LST2-02	R3UB3	669	FOOT	RPW	46.76136 -110.901
NWO-2013-1385-MTH-S-LST5-01	R3UB1	12	FOOT	RPW	46.774 -110.896
NWO-2013-1385-MTH-S-LST5-02	R3UB1	1203	FOOT	RPW	46.77311 -110.893
NWO-2013-1385-MTH-S-LST6-01	R3UB3	709	FOOT	RPW	46.77054 -110.882
NWO-2013-1385-MTH-S-SC-01	R3UB	230	FOOT	RPW	46.78793 -110.912
NWO-2013-1385-MTH-S-SC-02	R3UB1	6130	FOOT	RPW	46.78009 -110.902
NWO-2013-1385-MTH-S-SC-03	R3UB1	72	FOOT	RPW	46.77374 -110.869
NWO-2013-1385-MTH-S-SC-04	R3UB1	109	FOOT	RPW	46.77371 -110.868
NWO-2013-1385-MTH-S-SC-05	R3UB1	122	FOOT	RPW	46.77363 -110.865
NWO-2013-1385-MTH-S-SCOT-01	R3UB3	568	FOOT	RPW	46.77313 -110.868
NWO-2013-1385-MTH-S-SCOT-02	R3UB3	142	FOOT	RPW	46.77305 -110.868
NWO-2013-1385-MTH-S-SCT1-01	R3UB1	3100	FOOT	RPW	46.784 -110.901
NWO-2013-1385-MTH-S-SCT1-02	R3UB3	599	FOOT	RPW	46.7833 -110.905
NWO-2013-1385-MTH-S-SCT1-03	R3AB3	221	FOOT	RPW	46.78398 -110.902
NWO-2013-1385-MTH-S-SCT1-04	R3AB3	180	FOOT	RPW	46.78404 -110.899
NWO-2013-1385-MTH-S-SCT2-01	R3UB3	889	FOOT	RPW	46.77807 -110.898
NWO-2013-1385-MTH-S-SCT5-01	R3UB3	2766	FOOT	RPW	46.78118 -110.908
NWO-2013-1385-MTH-S-SCT5-02	R3UB3	597	FOOT	RPW	46.78399 -110.908
NWO-2013-1385-MTH-S-SCT5-03	R3UB3	836	FOOT	RPW	46.78335 -110.907
NWO-2013-1385-MTH-S-SCT5-04	R3UB3	199	FOOT	RPW	46.78381 -110.907
NWO-2013-1385-MTH-S-SCT5-05	R3UB3	145	FOOT	RPW	46.7782 -110.908
NWO-2013-1385-MTH-S-SCT5-06	R3UB3	3701	FOOT	RPW	46.77592 -110.913
NWO-2013-1385-MTH-S-SCT5-07	R3UB3	430	FOOT	RPW	46.7726 -110.919
NWO-2013-1385-MTH-S-SCT5-10	R3UB3	2776	FOOT	RPW	46.78219 -110.917
NWO-2013-1385-MTH-W-BB-01	PSS1	0.39	ACRE	RPWWD	46.76774 -110.949
NWO-2013-1385-MTH-W-BB-02	PEM1	0.96	ACRE	RPWWD	46.76772 -110.949
NWO-2013-1385-MTH-W-BB-03	PSS1	0.5	ACRE	RPWWD	46.76755 -110.948
NWO-2013-1385-MTH-W-BB-04	PEM1	0.28	ACRE	RPWWD	46.76703 -110.949
NWO-2013-1385-MTH-W-BB-05	PSS1	6.86	ACRE	RPWWD	46.76514 -110.945
NWO-2013-1385-MTH-W-BB-06	PSS6	0.5	ACRE	RPWWD	46.76655 -110.948
NWO-2013-1385-MTH-W-BB-07	PSS6	0.48	ACRE	RPWWD	46.76572 -110.947
NWO-2013-1385-MTH-W-BB-08	PSS6	0.63	ACRE	RPWWD	46.76525 -110.945
NWO-2013-1385-MTH-W-BB-09	PEM1	0.22	ACRE	RPWWD	46.76498 -110.945
NWO-2013-1385-MTH-W-BB-10	PEM1	9.23	ACRE	RPWWD	46.76344 -110.941
NWO-2013-1385-MTH-W-BB-11	PSS1	0.12	ACRE	RPWWD	46.76294 -110.942
NWO-2013-1385-MTH-W-BBT1-01	PEM1	0.52	ACRE	RPWWD	46.78753 -110.942
NWO-2013-1385-MTH-W-BBT1-02	PEM1	1.03	ACRE	RPWWD	46.78733 -110.936
NWO-2013-1385-MTH-W-LS-01	PSS1	0.58	ACRE	RPWWD	46.7748 -110.898
NWO-2013-1385-MTH-W-LS-02	PSS1	4.23	ACRE	RPWWD	46.77337 -110.896
NWO-2013-1385-MTH-W-LS-03	PEM1	0.48	ACRE	RPWWD	46.7721 -110.893
NWO-2013-1385-MTH-W-LS-05	PEM1	18.05	ACRE	RPWWD	46.77092 -110.882
NWO-2013-1385-MTH-W-LS-07	PSS6	0.71	ACRE	RPWWD	46.77108 -110.883
NWO-2013-1385-MTH-W-LS-08	PSS6	1.26	ACRE	RPWWD	46.77054 -110.883
NWO-2013-1385-MTH-W-LS-09	PSS6	0.91	ACRE	RPWWD	46.77042 -110.881
NWO-2013-1385-MTH-W-LS-10	PSS6	0.22	ACRE	RPWWD	46.76991 -110.881
NWO-2013-1385-MTH-W-LS-11	PEM1	22.96	ACRE	RPWWD	46.76379 -110.875
NWO-2013-1385-MTH-W-LS-12	PSS6	0.58	ACRE	RPWWD	46.76603 -110.873
NWO-2013-1385-MTH-W-LS-13	PEM1	0.54	ACRE	RPWWD	46.76659 -110.872
NWO-2013-1385-MTH-W-LS-14	PSS6	3.77	ACRE	RPWWD	46.76586 -110.872
NWO-2013-1385-MTH-W-LS-15	PSS6	1.61	ACRE	RPWWD	46.76534 -110.873
NWO-2013-1385-MTH-W-LS-16	PSS6	12.21	ACRE	RPWWD	46.76337 -110.875
NWO-2013-1385-MTH-W-LS-17	PSS6	5.13	ACRE	RPWWD	46.76243 -110.877
NWO-2013-1385-MTH-W-LS-18	PSS6	34.25	ACRE	RPWWD	46.76043 -110.883
NWO-2013-1385-MTH-W-LS-19	PSS1	0.35	ACRE	RPWWD	46.76161 -110.879
NWO-2013-1385-MTH-W-LS-20	PEM1	0.52	ACRE	RPWWD	46.76123 -110.88
NWO-2013-1385-MTH-W-LS-21	PEM1	3.8	ACRE	RPWWD	46.75715 -110.892
NWO-2013-1385-MTH-W-LS-22	PSS6	2.32	ACRE	RPWWD	46.75503 -110.894

NWO-2013-1385-MTH-W-LS-23	PEM1	2.94	ACRE	RPWWD 46.75289 -110.897
NWO-2013-1385-MTH-W-LS-24	PEM1	1.76	ACRE	RPWWD 46.74216 -110.909
NWO-2013-1385-MTH-W-LST1-02	PSS6	0.42	ACRE	RPWWD 46.77051 -110.894
NWO-2013-1385-MTH-W-LST1-03	PSS1	0.72	ACRE	RPWWD 46.7705 -110.894
NWO-2013-1385-MTH-W-LST1-04	PSS6	0.26	ACRE	RPWWD 46.77054 -110.894
NWO-2013-1385-MTH-W-LST1-05	PSS6	1.43	ACRE	RPWWD 46.76947 -110.896
NWO-2013-1385-MTH-W-LST1-06	PEM1	4.55	ACRE	RPWWD 46.76761 -110.901
NWO-2013-1385-MTH-W-LST1-08	PSS1	2.58	ACRE	RPWWD 46.76612 -110.904
NWO-2013-1385-MTH-W-LST1-09	PEM1	3.26	ACRE	RPWWD 46.76493 -110.907
NWO-2013-1385-MTH-W-LST1-10	PSS6	0.46	ACRE	RPWWD 46.76503 -110.906
NWO-2013-1385-MTH-W-LST1-11	PSS6	0.56	ACRE	RPWWD 46.76452 -110.907
NWO-2013-1385-MTH-W-LST2-01	PEM1	0.91	ACRE	RPWWD 46.76753 -110.876
NWO-2013-1385-MTH-W-LST2-02	PSS6	0.63	ACRE	RPWWD 46.76734 -110.875
NWO-2013-1385-MTH-W-LST5-01	PEM1	10.62	ACRE	RPWWD 46.77292 -110.89
NWO-2013-1385-MTH-W-LST5-02	PUB3	0.38	ACRE	RPWWD 46.77314 -110.891
NWO-2013-1385-MTH-W-LST5-03	PSS1	0.47	ACRE	RPWWD 46.77347 -110.89
NWO-2013-1385-MTH-W-SC-01	PSS1	0.08	ACRE	RPWWD 46.78796 -110.912
NWO-2013-1385-MTH-W-SC-02	PSS1	0.14	ACRE	RPWWD 46.78786 -110.912
NWO-2013-1385-MTH-W-SC-03	PSS1	14.29	ACRE	RPWWD 46.78321 -110.908
NWO-2013-1385-MTH-W-SC-04	PSS1	0.04	ACRE	RPWWD 46.78451 -110.906
NWO-2013-1385-MTH-W-SC-05	PSS1	0.04	ACRE	RPWWD 46.78444 -110.906
NWO-2013-1385-MTH-W-SC-06	PSS1	14.14	ACRE	RPWWD 46.78285 -110.904
NWO-2013-1385-MTH-W-SC-07	PEM1	0.4	ACRE	RPWWD 46.7839 -110.904
NWO-2013-1385-MTH-W-SC-08	PEM1	1.08	ACRE	RPWWD 46.78212 -110.906
NWO-2013-1385-MTH-W-SC-09	PEM1	0.36	ACRE	RPWWD 46.78168 -110.906
NWO-2013-1385-MTH-W-SC-10	PSS1	0.08	ACRE	RPWWD 46.78096 -110.904
NWO-2013-1385-MTH-W-SC-11	PEM1	6.46	ACRE	RPWWD 46.77929 -110.904
NWO-2013-1385-MTH-W-SC-12	PEM1	1.99	ACRE	RPWWD 46.78001 -110.902
NWO-2013-1385-MTH-W-SC-13	PSS1	0.3	ACRE	RPWWD 46.78034 -110.902
NWO-2013-1385-MTH-W-SC-14	PSS1	0.11	ACRE	RPWWD 46.78005 -110.902
NWO-2013-1385-MTH-W-SC-15	PSS1	7.01	ACRE	RPWWD 46.77917 -110.904
NWO-2013-1385-MTH-W-SC-16	PEM1	30.06	ACRE	RPWWD 46.7784 -110.905
NWO-2013-1385-MTH-W-SC-17	PSS1	0.23	ACRE	RPWWD 46.77853 -110.907
NWO-2013-1385-MTH-W-SC-18	PEM1	0.17	ACRE	RPWWD 46.77816 -110.905
NWO-2013-1385-MTH-W-SC-19	PEM1	0.24	ACRE	RPWWD 46.77829 -110.903
NWO-2013-1385-MTH-W-SC-20	PEM1	0.5	ACRE	RPWWD 46.77857 -110.902
NWO-2013-1385-MTH-W-SC-21	PEM1	0.99	ACRE	RPWWD 46.77764 -110.901
NWO-2013-1385-MTH-W-SC-22	PEM1	0.2	ACRE	RPWWD 46.77871 -110.901
NWO-2013-1385-MTH-W-SC-23	PSS1	0.1	ACRE	RPWWD 46.77773 -110.9
NWO-2013-1385-MTH-W-SC-24	PEM1	0.15	ACRE	RPWWD 46.77733 -110.901
NWO-2013-1385-MTH-W-SC-25	PSS1	0.74	ACRE	RPWWD 46.77711 -110.9
NWO-2013-1385-MTH-W-SC-26	PEM1	0.74	ACRE	RPWWD 46.77814 -110.9
NWO-2013-1385-MTH-W-SC-27	PSS1	0.5	ACRE	RPWWD 46.77566 -110.903
NWO-2013-1385-MTH-W-SC-29	PSS1	7.11	ACRE	RPWWD 46.77663 -110.898
NWO-2013-1385-MTH-W-SC-30	PSS1	0.63	ACRE	RPWWD 46.77763 -110.898
NWO-2013-1385-MTH-W-SC-31	PEM1	4.57	ACRE	RPWWD 46.77568 -110.899
NWO-2013-1385-MTH-W-SC-32	PSS1	0.39	ACRE	RPWWD 46.77698 -110.897
NWO-2013-1385-MTH-W-SC-33	PEM1	1.4	ACRE	RPWWD 46.77549 -110.897
NWO-2013-1385-MTH-W-SC-34	PSS1	1.69	ACRE	RPWWD 46.77328 -110.869
NWO-2013-1385-MTH-W-SC-35	PEM1	2.02	ACRE	RPWWD 46.77311 -110.867
NWO-2013-1385-MTH-W-SC-36	PSS1	0.38	ACRE	RPWWD 46.77358 -110.868
NWO-2013-1385-MTH-W-SC-37	PSS1	5.44	ACRE	RPWWD 46.77307 -110.866
NWO-2013-1385-MTH-W-SC-38	PEM1	0.37	ACRE	RPWWD 46.7732 -110.867
NWO-2013-1385-MTH-W-SC-39	PEM1	0.49	ACRE	RPWWD 46.77268 -110.866
NWO-2013-1385-MTH-W-SC-40	PEM1	0.19	ACRE	RPWWD 46.77234 -110.865
NWO-2013-1385-MTH-W-SC-41	PEM1	0.06	ACRE	RPWWD 46.77371 -110.865
NWO-2013-1385-MTH-W-SC-42	PSS1	0.38	ACRE	RPWWD 46.77333 -110.865
NWO-2013-1385-MTH-W-SC-43	PEM1	0.32	ACRE	RPWWD 46.77326 -110.865
NWO-2013-1385-MTH-W-SCT1-01	PSS6	0.29	ACRE	RPWWD 46.78374 -110.902
NWO-2013-1385-MTH-W-SCT1-02	PEM1	0.32	ACRE	RPWWD 46.78387 -110.901
NWO-2013-1385-MTH-W-SCT1-03	PSS6	0.54	ACRE	RPWWD 46.78401 -110.9
NWO-2013-1385-MTH-W-SCT1-04	PSS6	0.39	ACRE	RPWWD 46.78408 -110.899
NWO-2013-1385-MTH-W-SCT1-05	PSS1	0.81	ACRE	RPWWD 46.78415 -110.898
NWO-2013-1385-MTH-W-SCT1-06	PEM1	4	ACRE	RPWWD 46.7842 -110.9
NWO-2013-1385-MTH-W-SCT1-07	PSS6	0.66	ACRE	RPWWD 46.78443 -110.897
NWO-2013-1385-MTH-W-SCT2-01	PSS6	3.51	ACRE	RPWWD 46.77783 -110.897

NWO-2013-1385-MTH-W-SCT2-02	PEM1	0.94	ACRE	RPWWD 46.77909 -110.897
NWO-2013-1385-MTH-W-SCT5-01	PEM1	0.35	ACRE	RPWWD 46.77842 -110.909
NWO-2013-1385-MTH-W-SCT5-04	PEM1	0.66	ACRE	RPWWD 46.7813 -110.916
NWO-2013-1385-MTH-W-SCT5-05	PFO4	0.08	ACRE	RPWWD 46.78228 -110.917
NWO-2013-1385-MTH-W-SCT5-06	PFO4	1.78	ACRE	RPWWD 46.7823 -110.92
NWO-2013-1385-MTH-W-SCT5-07	PEM1	1.13	ACRE	RPWWD 46.78161 -110.924
NWO-2013-1385-MTH-W-SCT5-11	PSS1	8.29	ACRE	RPWWD 46.77665 -110.914
NWO-2013-1385-MTH-W-SCT5-12	PSS1	6.03	ACRE	RPWWD 46.77166 -110.92
NWO-2013-1385-MTH-W-SCT5-13	PSS6	3.15	ACRE	RPWWD 46.77113 -110.919
NWO-2013-1385-MTH-W-SCT5-14	PEM1	0.4	ACRE	RPWWD 46.7708 -110.921
NWO-2013-1385-MTH-W-BBT1-03	PEM1	0.25	ACRE	RPWWN 46.78783 -110.937
NWO-2013-1385-MTH-W-BBT1-04	PEM1	0.03	ACRE	RPWWN 46.78725 -110.934
NWO-2013-1385-MTH-W-BBT1-05	PEM1	0.01	ACRE	RPWWN 46.78736 -110.934
NWO-2013-1385-MTH-W-BBT1-06	PEM1	0.06	ACRE	RPWWN 46.78669 -110.934
NWO-2013-1385-MTH-W-BBT1-07	PEM1	0.01	ACRE	RPWWN 46.78652 -110.934
NWO-2013-1385-MTH-W-BBT1-08	PEM1	0	ACRE	RPWWN 46.78646 -110.933
NWO-2013-1385-MTH-W-BBT1-09	PEM1	0	ACRE	RPWWN 46.78659 -110.933
NWO-2013-1385-MTH-W-BBT1-10	PEM1	0	ACRE	RPWWN 46.78635 -110.933
NWO-2013-1385-MTH-W-BBT1-11	PUB3	0.04	ACRE	RPWWN 46.78611 -110.933
NWO-2013-1385-MTH-W-BBT1-12	PUB3	0.02	ACRE	RPWWN 46.78585 -110.933
NWO-2013-1385-MTH-W-BBT1-13	PEM1	0.01	ACRE	RPWWN 46.78564 -110.932
NWO-2013-1385-MTH-W-BBT1-14	PEM1	0.01	ACRE	RPWWN 46.78553 -110.932
NWO-2013-1385-MTH-W-BBT1-15	PEM1	0	ACRE	RPWWN 46.78527 -110.932
NWO-2013-1385-MTH-W-BBT1-16	PEM1	0.01	ACRE	RPWWN 46.7849 -110.931
NWO-2013-1385-MTH-W-BBT1-17	PEM1	0.11	ACRE	RPWWN 46.78468 -110.931
NWO-2013-1385-MTH-W-BBT1-18	PEM1	0	ACRE	RPWWN 46.78696 -110.933
NWO-2013-1385-MTH-W-BBT1-19	PUB3	0.01	ACRE	RPWWN 46.78637 -110.932
NWO-2013-1385-MTH-W-BBT1-20	PUB3	0.01	ACRE	RPWWN 46.78661 -110.932
NWO-2013-1385-MTH-W-BBT1-21	PUB3	0	ACRE	RPWWN 46.78666 -110.932
NWO-2013-1385-MTH-W-BBT1-22	PUB3	0	ACRE	RPWWN 46.78649 -110.932
NWO-2013-1385-MTH-W-BBT1-23	PUB3	0	ACRE	RPWWN 46.78643 -110.931
NWO-2013-1385-MTH-W-BBT1-24	PEM1	0	ACRE	RPWWN 46.78657 -110.931
NWO-2013-1385-MTH-W-BBT1-25	PUB3	0.02	ACRE	RPWWN 46.78656 -110.931
NWO-2013-1385-MTH-W-BBT1-26	PUB3	0.01	ACRE	RPWWN 46.7868 -110.931
NWO-2013-1385-MTH-W-LS-04	PUB3	0.01	ACRE	RPWWN 46.77166 -110.888
NWO-2013-1385-MTH-W-LS-06	PUB3	0.08	ACRE	RPWWN 46.77311 -110.884
NWO-2013-1385-MTH-W-LST1-07	PSS1	0.03	ACRE	RPWWN 46.76611 -110.902
NWO-2013-1385-MTH-W-LST2-03	PEM1	0	ACRE	RPWWN 46.76638 -110.877
NWO-2013-1385-MTH-W-LST2-04	PEM1	0	ACRE	RPWWN 46.76632 -110.877
NWO-2013-1385-MTH-W-LST2-05	PEM1	0.6	ACRE	RPWWN 46.76595 -110.881
NWO-2013-1385-MTH-W-LST2-06	PSS6	4.11	ACRE	RPWWN 46.76437 -110.887
NWO-2013-1385-MTH-W-LST2-07	PEM1	0.6	ACRE	RPWWN 46.76538 -110.884
NWO-2013-1385-MTH-W-LST2-08	PEM1	0.44	ACRE	RPWWN 46.76439 -110.886
NWO-2013-1385-MTH-W-LST2-09	PEM1	0.58	ACRE	RPWWN 46.76357 -110.889
NWO-2013-1385-MTH-W-LST2-10	PSS1	3.13	ACRE	RPWWN 46.76236 -110.892
NWO-2013-1385-MTH-W-LST2-11	PSS6	0.59	ACRE	RPWWN 46.76263 -110.892
NWO-2013-1385-MTH-W-LST2-12	PEM1	0.49	ACRE	RPWWN 46.76215 -110.895
NWO-2013-1385-MTH-W-LST2-13	PEM1	0.3	ACRE	RPWWN 46.76166 -110.898
NWO-2013-1385-MTH-W-LST2-14	PSS1	0.47	ACRE	RPWWN 46.76146 -110.9
NWO-2013-1385-MTH-W-LST2-15	PEM1	0.18	ACRE	RPWWN 46.76107 -110.901
NWO-2013-1385-MTH-W-LST3-01	PSS6	0.15	ACRE	RPWWN 46.7555 -110.896
NWO-2013-1385-MTH-W-LST3-02	PSS6	0.2	ACRE	RPWWN 46.75441 -110.9
NWO-2013-1385-MTH-W-LST7-1	PEM1	0.01	ACRE	RPWWN 46.76098 -110.874
NWO-2013-1385-MTH-W-SC-28	PSS1	0.07	ACRE	RPWWN 46.77553 -110.903.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION:

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5/4/2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District, NWO-2013-01385-MTH

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MT County/parish/borough: Meagher City: White Sulfur Springs
Center coordinates of site (lat/long in degree decimal format): Lat. 46.59776N; Long. -110.88412W
Universal Transverse Mercator:

Name of nearest waterbody: Lower Sheep Creek, Black Butte Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Smith River

Name of watershed or Hydrologic Unit Code (HUC): L1003010301 North Fork Smith River

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 8-25-2015, 11-25-2015
 Field Determination. Date(s): 7-25-2015

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: see chart linear feet: width (ft) and/or see chart acres.
Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain:

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 194 square miles

Drainage area: 194 Pick List

Average annual rainfall: 16 inches

Average annual snowfall: 83 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 3 tributaries before entering TNW.

Project waters are 20-25 river miles from TNW.

Project waters are 2-5 river miles from RPW.

Project waters are 15-20 aerial (straight) miles from TNW.

Project waters are 1-2 aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: Tributaries to Sheep Creek flow into the Smith River, a tributary to the Missouri River.

Tributary stream order, if known: fifth.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: 2 feet
Average depth: 1 feet
Average side slopes: **4:1 (or greater)**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **good**.

Presence of run/riffle/pool complexes. Explain: **yes**.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 50 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: **rainwater and snow melt during spring summer and fall.**

Other information on duration and volume:

Surface flow is: **Confined**. Characteristics:

Subsurface flow: **Yes**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain: **streams fed by run off, no permanent water..**

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: **Clear**.

Identify specific pollutants, if known: **Aluminum, iron, E.Coli.**

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 10 foot.
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: see chart/tables

Wetland type. Explain: see chart.

Wetland quality. Explain: see chart.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain:

Surface flow is: **Confined**

Characteristics:

Subsurface flow: **Unknown**. Explain findings:

- Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain: all jurisdictional wetlands have a vegetation or surface water connection to a

RPW or NRPW.

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **15-20** river miles from TNW.

Project waters are **20-25** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **50 - 100-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: clear.

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **30 (or more)**

Approximately (see chart) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

[see chart](#)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
The tributaries and wetlands in the review area are assumed to be of medium quality. Adjoining land use consists mainly of livestock grazing. The waterways have less than seasonal intermittent flow regime that contributes to retention of flood waters during times of high flow from precipitation events and snow melt, which helps to slow the discharge of water to downstream tributaries and reduce the velocity roughness coefficient of the stream, in turn contributing to longer periods of normal flow versus high flow pulses. The wetlands further contribute to providing carbon export to downstream areas that is important to the food web predator/prey relationship. Many of the essential life cycle nutrients for the food chain originate in the up gradient ecosystem. Other important functions of the review area wetlands include the capturing of eroded soils from the steep graded hills, thereby improving the water quality of the aquatic ecosystem. These benefits are provided in an accumulative setting in the watershed catchment area. Although impacted by livestock, the headwaters system helps to promote the structural biological, chemical and physical integrity of the downstream Sheep Creek and ultimately Smith River, a TNW. Based on these six factors, the headwater tributary system is providing more than a speculative or insubstantial effect on the Smith River TNW, therefore these waters are considered to have a significant nexus to the TNW.
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.

Wetlands adjacent to TNWs: acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

Tributary waters: **see chart** linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **see chart** acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: [West Tech Environmental Services](#).
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: [L1003010301 North Fork Smith River](#).
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): .
or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

CHART:

Wetlands:

NWO-2013-1385-MTH-W-BBT3-01	PSS1	0.11	ACRE	NRPWW 46.74184 -110.928	Abutting
NWO-2013-1385-MTH-W-BBT3-02	PEM1	0.67	ACRE	NRPWW 46.74157 -110.927	Abutting
NWO-2013-1385-MTH-W-BBT3-03	PSS1	0.04	ACRE	NRPWW 46.74112 -110.926	Abutting
NWO-2013-1385-MTH-W-BBT3-04	PEM1	0.04	ACRE	NRPWW 46.74078 -110.924	Adjacent
NWO-2013-1385-MTH-W-LST1-12	PEM1	0.16	ACRE	NRPWW 46.76437 -110.915	Abutting
NWO-2013-1385-MTH-W-LST1-13	PEM1	0.27	ACRE	NRPWW 46.7634 -110.914	Abutting
NWO-2013-1385-MTH-W-LST1-14	PEM1	0.05	ACRE	NRPWW 46.76255 -110.911	Abutting
NWO-2013-1385-MTH-W-LST1-15	PEM1	0.02	ACRE	NRPWW 46.76095 -110.913	Abutting
NWO-2013-1385-MTH-W-LST1-16	PEM1	0.14	ACRE	NRPWW 46.75986 -110.915	Abutting
NWO-2013-1385-MTH-W-LST1-17	PEM1	0.07	ACRE	NRPWW 46.75854 -110.918	Abutting
NWO-2013-1385-MTH-W-LST4-01	PEM1	0.67	ACRE	NRPWW 46.74696 -110.909	Abutting
NWO-2013-1385-MTH-W-LST4-02	PEM1	0.39	ACRE	NRPWW 46.74883 -110.91	Abutting
NWO-2013-1385-MTH-W-LST4-03	PEM1	0.02	ACRE	NRPWW 46.74939 -110.914	Abutting
NWO-2013-1385-MTH-W-LST4-04	PEM1	0.01	ACRE	NRPWW 46.74941 -110.915	Abutting
NWO-2013-1385-MTH-W-LST4-05	PEM1	0.19	ACRE	NRPWW 46.74979 -110.918	Abutting
NWO-2013-1385-MTH-W-SCT3-01	PSS6	0.94	ACRE	NRPWW 46.77355 -110.872	Abutting
NWO-2013-1385-MTH-W-SCT3-02	PEM1	0.42	ACRE	NRPWW 46.77351 -110.872	Abutting
NWO-2013-1385-MTH-W-SCT3-03	PSS1	1.04	ACRE	NRPWW 46.77299 -110.871	Abutting
NWO-2013-1385-MTH-W-SCT3-04	PEM1	0.3	ACRE	NRPWW 46.77361 -110.871	Abutting
NWO-2013-1385-MTH-W-SCT3-05	PEM1	0.46	ACRE	NRPWW 46.77112 -110.869	Abutting
NWO-2013-1385-MTH-W-SCT5-02	PSS1	0.24	ACRE	NRPWW 46.77931 -110.913	Abutting
NWO-2013-1385-MTH-W-SCT5-03	PEM1	0.22	ACRE	NRPWW 46.77889 -110.911	Abutting
NWO-2013-1385-MTH-W-SCT5-08	PEM1	0.02	ACRE	NRPWW 46.78066 -110.928	Adjacent
NWO-2013-1385-MTH-W-SCT5-09	PEM1	0.58	ACRE	NRPWW 46.78099 -110.93	Adjacent
NWO-2013-1385-MTH-W-SCT5-10	PEM1	0.03	ACRE	NRPWW 46.78156 -110.929	Adjacent

Waters:

NWO-2013-1385-MTH-S-BBT1-01	R4SB2	223	FOOT	NRPW 46.78658 -110.949	
NWO-2013-1385-MTH-S-BBT1-02	R4SB2	629	FOOT	NRPW 46.78692 -110.947	
NWO-2013-1385-MTH-S-LST1-02	R4SB5	98	FOOT	NRPW 46.76482 -110.907	
NWO-2013-1385-MTH-S-LST1-03	R4SB5	420	FOOT	NRPW 46.76315 -110.911	
NWO-2013-1385-MTH-S-LST1-04	R4SB5	1102	FOOT	NRPW 46.76144 -110.912	
NWO-2013-1385-MTH-S-LST1-05	R4SB5	588	FOOT	NRPW 46.7579 -110.92	
NWO-2013-1385-MTH-S-LST1-06	R4SB5	357	FOOT	NRPW 46.76382 -110.913	
NWO-2013-1385-MTH-S-LST1-07	R4SB5	339	FOOT	NRPW 46.76416 -110.914	
NWO-2013-1385-MTH-S-LST4-01	R4SB5	911	FOOT	NRPW 46.74718 -110.908	
NWO-2013-1385-MTH-S-LST4-02	R4SB3	271	FOOT	NRPW 46.74791 -110.909	
NWO-2013-1385-MTH-S-LST4-03	R4SB3	770	FOOT	NRPW 46.74925 -110.913	
NWO-2013-1385-MTH-S-LST4-04	R4SB3	279	FOOT	NRPW 46.74957 -110.916	
NWO-2013-1385-MTH-S-LST4-05	R4SB3	76	FOOT	NRPW 46.74959 -110.919	
NWO-2013-1385-MTH-S-LST7-01	R4SB5	1373	FOOT	NRPW 46.76088 -110.873	
NWO-2013-1385-MTH-S-SCO-01	R4SB5	645	FOOT	NRPW 46.78261 -110.904	
NWO-2013-1385-MTH-S-SCO-02	R4SB5	179	FOOT	NRPW 46.78315 -110.904	
NWO-2013-1385-MTH-S-SCO-03	R4SB5	226	FOOT	NRPW 46.78172 -110.905	
NWO-2013-1385-MTH-S-SCO-04	R4SB5	957	FOOT	NRPW 46.78141 -110.903	
NWO-2013-1385-MTH-S-SCO-05	R4SB5	435	FOOT	NRPW 46.78198 -110.904	
NWO-2013-1385-MTH-S-SCO-06	R4SB7	3514	FOOT	NRPW 46.77837 -110.903	
NWO-2013-1385-MTH-S-SCO-07	R4SB5	177	FOOT	NRPW 46.78103 -110.904	
NWO-2013-1385-MTH-S-SCO-08	R4SB7	1049	FOOT	NRPW 46.77962 -110.903	
NWO-2013-1385-MTH-S-SCO-09	R4SB5	405	FOOT	NRPW 46.77702 -110.898	
NWO-2013-1385-MTH-S-SCO-10	R4SB5	645	FOOT	NRPW 46.77626 -110.897	
NWO-2013-1385-MTH-S-SCO-11	R4SB5	78	FOOT	NRPW 46.77374 -110.867	
NWO-2013-1385-MTH-S-SCO-12	R4SB5	834	FOOT	NRPW 46.77323 -110.866	

NWO-2013-1385-MTH-S-SCO-13	R4SB5	302	FOOT	NRPW	46.77247 -110.865
NWO-2013-1385-MTH-S-SCT5-08	R4SB7	632	FOOT	NRPW	46.77868 -110.911
NWO-2013-1385-MTH-S-SCT5-09	R4SB7	1210	FOOT	NRPW	46.77914 -110.912
NWO-2013-1385-MTH-S-SCT5-11	R4SB7	174	FOOT	NRPW	46.78116 -110.926
NWO-2013-1385-MTH-S-SCT5-12	R4SB7	134	FOOT	NRPW	46.78083 -110.927

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION:

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 2/26/2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District, NWO-2013-01385-MTH

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **MT** County/parish/borough: **Meagher** City: **White Sulfur Springs**
Center coordinates of site (lat/long in degree decimal format): **Lat.46.59776N; Long.-110.88412W**
Universal Transverse Mercator:

Name of nearest waterbody: **Lower Sheep Creek, Black Butte Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None**

Name of watershed or Hydrologic Unit Code (HUC): **L1003010301 North Fork Smith River**

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: **8-25-2015, 11-25-2015**

Field Determination. Date(s): **7-25-2015**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Pick List

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain:

W-LST3-02: 0.2 acres. Non WOUS-Isolated. Down gradient there is not tributary feature for approximately 3000 linear feet to where the non wetland swale intersects Lower Sheep Creek. No bed and bank.

W-LST3-01: 0.15 acres. Non WOUS-Isolated. Down gradient of W-LST3-02. There is a wide non-wetland swale for approximately 1300 linear feet where the swale intersects Lower Sheep Creek.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

W-BBT2-01: 0.02 acres. Non WOUS-Isolated. This wetland is a small hill side spring that is surrounded by uplands with no tributary features or drainage patterns, and is situated approximately 1500 linear feet from Black Butte Creek. Down gradient is a wide valley with no tributary features.

W-SCT4-01: 0.89 acres, W-SCT4-02 0.03 acres and W-SCT4-03 0.01 acres. Non WOUS-Isolated. These three wetlands are a cluster of isolated hill side spring system. 01 terminates on its western edge into a steep forested area and is approximately 2000 linear feet from the main stem of Sheep Creek. There is no visible tributary and no culvert under Sheep Creek Road that would suggest flows discharging into the creek.

W-BBT1-28 0.01 acres. Non WOUS-Isolated. This is a small hillside seep that is surrounded by uplands with no tributary features of drainage patterns. The wetland is approximately 1200 linear feet from the nearest WUS.

W-LST-01: 0.05 acres. This is a small hillside seep that is surrounded by uplands with no tributary features of drainage patterns. The wetland is approximately 1000 linear feet from the nearest WUS, Little Sheep Creek. No tributary features or swale was present.

S-LST-05: 588 linear feet of stream. This has been identified in the field as an ephemeral erosional feature and not a WOUS. .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

- Tributary is:** Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

- Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year: Pick List

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:

- Dye (or other) test performed:

Tributary has (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

- Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

PREPARED BY: BLANK.DEBORAH.LYNNE.1293573910
Deborah Blank RAH.LYNNE.1293573910
Project Manager _____ **Date:**

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REVIEWED BY: COLE.ROBERT.H.1266139710
Robert Cole 6139710 _____ **Date**
Acting Montana State Program Manager

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